

**JUDGE SWAIN**

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

UNIVERSITAS EDUCATION, LLC,

**11 CIV 1590**

: Case No.:

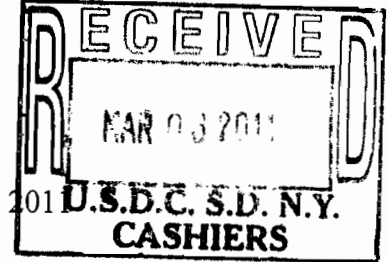
Petitioner,

v.

NOVA GROUP, INC., as Trustee, Sponsor  
And Named Fiduciary of the CHARTER OAK  
TRUST WELFARE BENEFIT PLAN,

Respondent.

: **NOTICE OF REMOVAL  
OF ACTION PURSUANT TO  
28 U.S.C. §§ 1441, 1446**



: March 8, 2011

**TO THE CLERK OF THE COURT:**

**PLEASE TAKE NOTICE** that Respondent NOVA GROUP, INC. ("Nova"), pursuant to 28 U.S.C. §§ 1331, 1332(a)(1) and 1441, hereby removes to this Court the civil action commenced by Petitioner **UNIVERSITAS EDUCATION, LLC** ("Universitas") in the Supreme Court of the State of New York, County of New York, Index No.: 650370/2011 (the "State Court Action").

**Preliminary Statement**

This action seeks to confirm a \$26.5 million arbitration award issued in favor of Universitas against Nova (the "Award"). An action regarding this exact same issue is already pending in the District of Connecticut by virtue of Nova having filed an application to vacate the Award in Connecticut State Court on January 2011 (the "Connecticut Action"), which Universitas subsequently removed to the District of Connecticut on or about March 3, 2011. As a result of the Connecticut Action having been removed by Universitas, Nova ascertained the

information necessary to establish the citizenship of Universitas for purposes of this Notice of Removal.

### **Grounds for Removal**

In support of this Notice of Removal, Nova states as follows:

1. On or about February 11, 2011, Universitas commenced a civil action in the Supreme Court of the State of New York, County of New York by filing a Summons with Notice. A true and correct copy of the Summons with Notice is annexed hereto as Exhibit “A.”
2. In the State Court Action, Universitas purports to seek to confirm an arbitration Award rendered in its favor on January 24, 2011 in the amount of \$26,525,535.98, examine an adverse party, and enter and enforce a judgment.
3. On February 17, 2011, Nova (through its registered agents) was served outside the State of New York with a copy of the Summons with Notice according to the Affidavits of Service attached as Exhibits “B” and “C.” However, Nova has yet to be personally served.
4. This action is a civil action of which this Court has original jurisdiction pursuant to both 28 U.S.C. § 1332 and 28 U.S.C. § 1331. This action may be removed to this Court by Petitioner Nova pursuant to 28 U.S.C. §§ 1441 and 1446 because the Summons with Notice filed by Universitas on February 11, 2011 and received by Nova on February 17, 2011 states the nature of the action, the relief sought, and the real parties involved in the action. Since this Court would have had original subject matter jurisdiction over this action had it been commenced in federal court, removal of this action is proper under 28 U.S.C. § 1441.<sup>1</sup>
5. Diversity jurisdiction pursuant to 28 U.S.C. § 1332 exists in this case based on the following:

---

<sup>1</sup> Nova, by removing the State Court Action to this Court, does not waive its right to assert any defense (including lack of personal jurisdiction) or to petition this Court for a change of venue.

- a. Universitas is a limited liability company with only two members: Donna Vassar and Sharon Siebert, both of whom reside in and are citizens of New York, having an address of 404 East 55th Street, Apt. 13A, New York, New York 10022. Thus, Universitas is a citizen of New York.
- b. Nova is a Delaware corporation with a principal place of business located at 100 Grist Mill Road, Simsbury, Connecticut 06070. Nova is the Trustee, Named Fiduciary, Plan Sponsor and Administrator of the Charter Oak Trust Welfare Benefit Plan, a Connecticut trust with an address of 100 Grist Mill Road, Simsbury, Connecticut 06070. Thus, pursuant to 28 U.S.C. § 1332(c)(1), Nova is a citizen of Delaware and Connecticut.
- c. As described in the Summons with Notice (Ex. A), Universitas seeks relief in the amount of \$26,525,535.98 – an amount well in excess of the amount in controversy requirement under 28 U.S.C. § 1332(b).

6. Based on the foregoing, this Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332(a)(1), as it is a matter between citizens of different states and the amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs.

7. Jurisdiction in this Court is also proper pursuant to 28 U.S.C. § 1331 because the underlying issue that will be determined through the prosecution of Universitas' State Court Action involves a determination that "necessarily depends on the resolution of a substantial question of federal law." *See Greenberg v. Bear, Stearns & Co.*, 220 F.3d 22, 26 (2<sup>nd</sup> Cir. 2000).

8. This notice is timely under 28 U.S.C. § 1446(b) because it has been filed within 30 days from the date upon which Nova first received a copy of the initial pleading.

9. A true and correct copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of the State of New York, County of New York, as required by 28 U.S.C. § 1446(d), and provided to counsel for Respondent Universitas.

WHEREFORE, Petitioner Nova respectfully requests that this action be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446, and placed on the docket of this Court for further proceedings as though originally instituted in this Court.

Dated: March 8, 2011

NOVA GROUP, INC.

By: 

Joseph M. Pastore III (JP 1717)

Paul R. Dehmel (PD 2711)

FOX ROTHSCHILD LLP

One Landmark Square, 21<sup>st</sup> Floor

Stamford, CT 06901

Telephone: (203) 425-9500

and

100 Park Avenue, Suite 1500

New York, New York 10017

Telephone: (212) 878-7900

E-mail: [jpastore@foxrothschild.com](mailto:jpastore@foxrothschild.com)

[pdehmel@foxrothschild.com](mailto:pdehmel@foxrothschild.com)

*Attorneys for RESPONDENT*

**CERTIFICATION**

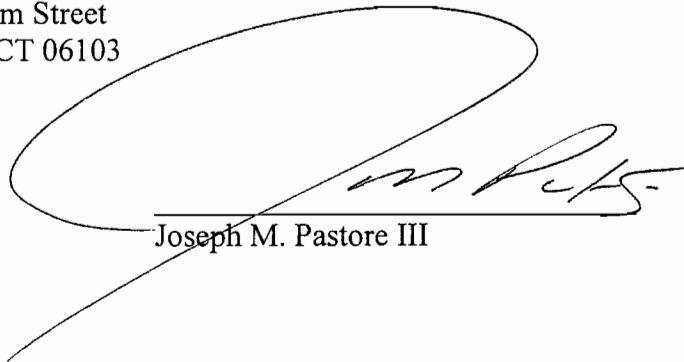
Pursuant to Fed. R. Civ. P. Rule 5(b), I hereby certify that a copy of the above was mailed or electronically delivered on March 8, 2011 to:

James T. Shearin, Esq.  
Pullman & Comley, LLC  
850 Main Street, P.O. Box 2006  
Bridgeport, CT 06601-7006

Paula K. Colbath, Esq.  
Loeb & Loeb LLP  
345 Park Avenue  
New York, New York 10154

Richard S. Order, Esq.  
Kevin J. McEleney, Esq.  
Updike, Kelly & Spellacy, P.C.  
100 Pearl Street, P.O. Box 231277  
Hartford, CT 06123-1277

William J. McGrath, Esq.  
Daniel P. Scapellati, Esq.  
Scott S. McKessy, Esq.  
Halloran & Sage LLP  
Pne Goodwin Square  
225 Asylum Street  
Hartford, CT 06103



Joseph M. Pastore III

# Exhibit A

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

----- X  
Application of :  
UNIVERSITAS EDUCATION, LLC, :  
 :  
Petitioner, :  
 :  
For an Order Pursuant to Article 75 of the : Index No.  
CPLR Confirming an Arbitration Award :  
 :  
-against- : Date of Purchase:  
 : **SUMMONS WITH NOTICE**  
NOVA GROUP, INC. as Trustee, Named :  
Fiduciary, Plan Sponsor and Administrator of :  
the Charter Oak Trust Welfare Benefit Plan, :  
 :  
Respondent. :  
----- X

**TO THE ABOVE NAMED RESPONDENTS:**

**YOU ARE HEREBY SUMMONED** to serve a notice of appearance on Plaintiff's attorney, at the address stated below, within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

New York County is designated as the place of trial on the basis of the parties' New York arbitration and the parties' transaction of business in New York County.

**TAKE NOTICE THAT** this is a proceeding to confirm an arbitration award, examine an adverse party, and enter and enforce a judgment. The relief sought is

an order confirming the arbitration award, an examination regarding assets, and entry of judgment in favor of Petitioner.

**PLEASE ALSO TAKE NOTICE** that in case of your failure to appear, judgment will be sought and may be taken against you in the sum of \$26,525,535.98, with interest thereon, together with the costs, expenses, attorneys' fees and disbursements of this action.

Dated: New York, New York  
February 11, 2011

LOEB & LOEB LLP

By: 

Paula K. Colbath  
Jennifer A. Williams  
345 Park Avenue  
New York, New York 10154-1895  
(212) 407-4000

*Attorneys for Petitioner*



**CERTIFICATION**

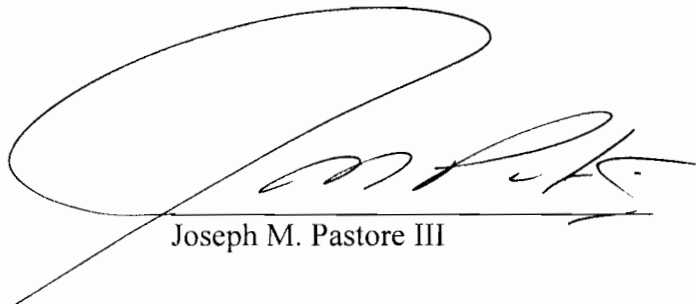
I hereby certify that on March 8, 2011, I caused a true and correct copy of the above  
to be served by U.S. mail upon the following:

James T. Shearin, Esq.  
Pullman & Comley, LLC  
850 Main Street, P.O. Box 2006  
Bridgeport, CT 06601-7006

Paula K. Colbath, Esq.  
Loeb & Loeb LLP  
345 Park Avenue  
New York, New York 10154

Richard S. Order, Esq.  
Kevin J. McEleney, Esq.  
Updike, Kelly & Spellacy, P.C.  
100 Pearl Street, P.O. Box 231277  
Hartford, CT 06123-1277

William J. McGrath, Esq.  
Daniel P. Scapellati, Esq.  
Scott S. McKessy, Esq.  
Halloran & Sage LLP  
Pne Goodwin Square  
225 Asylum Street  
Hartford, CT 06103



Joseph M. Pastore III

# Exhibit B

**Demovsky Lawyer Service**Premier Nationwide Document Retrieval  
and Process Service CompanySUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

Application of  
UNIVERSITAS EDUCATION, LLC,

Petitioner,

Index No. 650370/11

For an Order Pursuant to Article 75 of the  
CPLR Confirming an Arbitration Award

-against-

AFFIDAVIT OF SERVICE

NOVA GROUP, INC. as Trustee, Named  
Fiduciary, Plan Sponsor and Administrator of  
the Charter Oak Trust Welfare Benefit Plan,

Respondent.

-----X

STATE OF DELAWARE )  
S.S.:  
COUNTY OF NEW CASTLE)

DANIEL NEWCOMB, being duly sworn, deposes and says that he is over the age of eighteen years, is an agent of the attorney service, D.L.S., Inc., and is not a party to this action.

That on the 17<sup>th</sup> day of February, 2011, at approximately the time of 2:35pm, deponent served a true copy of the **SUMMONS WITH NOTICE** upon NOVA GROUP, INC., c/o Corporation Trust Company at 1209 Orange Street, Wilmington, Delaware by personally delivering and leaving the same with SCOTT LASCALA who informed deponent that he holds the position of Managing Agent with that company and is authorized by appointment to receive service at that address.

Scott LaScala is a white male, in his 40's, stands approximately 5 feet 10 inches tall, weighs approximately 170 pounds with brown hair.

DANIEL NEWCOMB

Sworn to before me this  
21 day of February, 2011D.L.S., Inc.  
401 Broadway  
Ste 510  
NY, NY 10013  
212-925-1220  
www.dlsny.com  
NOTARY PUBLICKIMBERLY J. RYAN  
NOTARY PUBLIC-DELAWARE  
My Commission Expires June 16, 2012

# Exhibit C

**Demovsky Lawyer Service**Premier Nationwide Document Retrieval  
and Process Service CompanySUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORKApplication of  
UNIVERSITAS EDUCATION, LLC,

Petitioner,

Index No. 650370/11

For an Order Pursuant to Article 75 of the  
CPLR Confirming an Arbitration Award

-against-

AFFIDAVIT OF SERVICE

NOVA GROUP, INC. as Trustee, Named  
Fiduciary, Plan Sponsor and Administrator of  
The Charter Oak Trust Welfare Benefit Plan,

Respondent

STATE OF CONNECTICUT )

S.S.:

COUNTY OF HARTFORD )

RICH ZECHIEL, being duly sworn, deposes and says that he is over the age of eighteen years, is an agent of the attorney service, D.L.S., Inc., and is not a party to this action.

That on the 17<sup>th</sup> day of FEBRUARY 2011, at approximately the time of 11:00 AM, deponent served a true copy of the SUMMONS WITH NOTICE upon NOVA GROUP, INC. c/o HALLORAN & SAGE at 225 ASYLUM STREET, HARTFORD, CONNECTICUT by personally delivering and leaving the same with TRACY MONTALBANO who informed deponent that she holds the position of Associate Attorney with that company and is authorized by appointment to receive service at that address.

Tracy Montalbano is a white female, approximately 35 years of age, stands approximately 5 feet 7 inches tall, and weighs approximately 110 pounds with black hair.



RICH ZECHIEL

Sworn to before me this  
22 day of FEBRUARY 2011


NOTARY PUBLIC

